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91-290

Supreme Court, U.S.
FILED
AUG 2 1991
OFFICE OF THE CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1991

24TH STREET PARTNERS,
Petitioner

vs.

UNITED STATES of AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI

to the

United States Court of Appeals
for the Federal Circuit

AMIL J. AJAMIE
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QUESTIONS PRESENTED FOR REVIEW

What actually caused Petitioner's tenants to be relocated? Was it the government acquisition of the property, or was it the Petitioner's order to vacate?

LIST OF ALL PARTIES

Petitioners:

Logan E. Van Sittert
Barbara C. Van Sittert
Paul T. Davis
Shirley A. Davis
Joseph A. Davis
John T. Davis d/b/a
24TH STREET PARTNERS

Respondent:

The United States

Parent Companies:

There are no corporations interested; therefore, this phrase is inapplicable.

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OFFICIAL and UNOFFICIAL

REPORTS of OPINIONS by OTHER COURTS or

ADMINISTRATIVE AGENCIES

United States Court of Appeals for the Federal Circuit, Entry of Judgment Without Opinion, Dated May 6, 1991, Affirming Opinion by Administrative Judge Anthony S. Borwick, dated June 4, 1990.

Board of Contract Appeals, General Services Administration, Opinion by Administrative Judge Borwick, dated June 4, 1990, [Incorrect citations appearing therein, corrected by Order of June 14, 1990.]

GSA letter to Paul Davis

GSA letter to Amil J. Ajamie

GROUNDS UPON WHICH JURISDICTION

of the

SUPREME COURT IS INVOKED PER RULE 14.1.(e)

(i) The judgment of the United States Court of Appeals for the Federal Circuit was entered on May 6, 1991. It affirmed, without opinion, the Board of Contract Appeals, General Services Administration, Opinion which was entered on June 4, 1990, and corrected on June 14, 1990

(ii) There was no rehearing nor any extension of time to file a petition for certiorari.

(iii) No Petition for Writ of Certiorari has been received by 24TH STREET PARTNERS.

(iv) It is believed that the United States Supreme Court has jurisdiction to entertain this Petition for Writ of Certiorari, pursuant to 28 USC §1254(1).

STATUTES IN ISSUE

The provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 involved in this action is, as follows:

42 USC §4601. Definitions

As used in this chapter -

(6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

STATEMENT OF THE CASE

In January, 1983, the General Services Administration published a Solicitation for Offers, seeking an offer to build for and lease to the government an office building.

24TH STREET PARTNERS responded to the SFO.

24TH STREET PARTNERS owned and operated two, adjacent trailer parks and the real properties on which they were situated in Phoenix, Arizona. The GSA project required only part of the property.

For several years, 24TH STREET PARTNERS had been trying to develop the properties which the two trailer parks occupied, and they were communicating with other persons toward that end.

GSA repeatedly warned 24TH STREET PARTNERS that the latter should not depend upon getting the government lease until the partners had a signed lease in hand. GSA led the partners to believe that other persons were competing for the job, and the partners believed that they were engaged in competition with others for the

project.

In July of 1983, GSA sent a contract to 24TH STREET PARTNERS, asking them to sign it and send it back. In the transmittal letter, GSA again warned 24TH STREET PARTNERS that no contract is established until the government signs. 24TH STREET PARTNERS did not need the warning, because in 1981, they suffered the experience of bidding on another SFO and spending a substantial sum of money to do so, only to have the government withdraw the SFO.

24TH STREET PARTNERS felt that they had a good chance to get the government construction contract and lease; so, they decided to risk ordering their mobile home tenants off the property. Furthermore, since it was their intention to develop the real property with or without the government lease, they chose to remove all the tenants from all of the property, including those who did not occupy that portion of the property which GSA wanted.

24TH STREET PARTNERS served its tenants with written notice to vacate on August 15, 1983, and

concurrently offered to help pay the tenants' moving costs and fees for turning on electricity and telephone service in exchange for prompt departure.

The tenants started moving immediately; but before they were all gone, on August 30, 1983, GSA signed the construction contract and lease with 24TH STREET PARTNERS mailing a copy of it to 24TH STREET PARTNERS that same day.

The construction contract and lease contains a provision which requires 24TH STREET PARTNERS to pay relocation costs under the Uniform Relocation Assistance and Real Property Policies Act of 1970. 24TH STREET PARTNERS argued, and the Board of Contract Appeals ruled that 24TH STREET PARTNERS would be required to pay only if GSA were compelled to pay by the act.

In September, 1983, the tenants became aware of the government project, and a pro bono lawyer wrote to GSA demanding relocation costs on behalf of all of the tenants under the act. 24TH STREET PARTNERS challenged the claims of the tenants, but GSA rejected the challenge,

started paying relocation costs to the tenants and commenced assessing these costs against 24TH STREET PARTNERS.

24TH STREET PARTNERS charged that the government acquisition did not cause the tenants' relocation and asked for declaratory relief under the Contract Disputes Act of 1978. In their request for declaratory relief, 24TH STREET PARTNERS raised several questions; however, all of the issues, but one, were ignored. GSA simply responded that the tenants' relocation costs must be paid by 24TH STREET PARTNERS. 24TH STREET PARTNERS then filed a complaint against GSA before the Board of Contract Appeals. Basically, the complaint raises issues of entitlement, errors in damage calculations and mitigation of damages.

Counsel for GSA and 24TH STREET PARTNERS agreed that the question of entitlement should first be addressed; because, if the Board should agree with the partners on the issue of cause and effect, there would be no reason to litigate the other, very burdensome issues. Together,

the attorneys called Administrative Judge Anthony S. Borwick, and he agreed to consider the one issue; namely, did a government acquisition cause the tenants to relocate?

The Board of Contract Appeals concluded that tenants who moved before the lease was signed are not entitled to relocation costs and that those who moved at and after the date of signing are entitled to relocation costs. The remaining issues, raised in the complaint, were left for future determination.

The U. S. Court of Appeals for the Federal Circuit affirmed without comment.

24TH STREET PARTNERS maintain that the judgment of that court suffers reversible error.

BASIS OF JURISDICTION IN THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT: 41 USC §607(g)(1)(A).

ARGUMENT FOR ALLOWANCE OF WRIT

Only "displaced persons," as that phrase is defined in 42 USC §4601(6), are entitled to receive the relocation costs which are prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

To be such a "displaced person" one's relocation must be the result of a federal government acquisition of the real property he or his personal property is occupying; or one must move as a result of a federal government written order to vacate real property. (There are other requirements in the statutory definition; however, their existence is not in dispute.)

It is undisputed that the federal government did not issue a written order to vacate the property. That leaves only the effect of property acquisition by the government to consider.

The signing of the construction contract and lease by the GSA on August 30, 1983, constituted a property acquisition by the federal govern-

ment.

However, on August 15, 1983, 24TH STREET PARTNERS ordered its tenants to vacate the properties and offered to help pay their relocation costs for departing sooner than required under Arizona law. Arizona law required a ninety-day notice.

There is no evidence in the record to suggest that the Notice to Vacate was illegal or otherwise ineffective.

Some of the tenants departed the premises before GSA signed the construction contract and lease. Others departed after the signing. All of the tenants left because of the Notice to Vacate served on them by 24TH STREET PARTNERS, and there is no evidence to the contrary. The tenants who did not occupy the property which GSA acquired also left.

24TH STREET PARTNERS presented uncontroverted evidence that they had two motives in ordering their tenants off the property; namely, they felt that they had a good chance to win the government contract; and, even if they did not

win the government contract, they intended to proceed with alternative plans to develop the property.

When 24TH STREET PARTNERS ordered their tenants off the property, they were speculating on the success of their bid to GSA. When the possibility of government acquisition ripened into reality, nothing was added to the existing cause of departure, and nothing was detracted. The legal and logical effect of the Notice to Vacate remained the same after the government acquisition as it was before the acquisition.

The reasoning of the Board of Contract Appeals suffers from the notion that a departure which follows government acquisition must necessarily result from the acquisition; however, there is no law to support that contention. The statute does not state that a departure which follows a government acquisition is presumed to be caused by the acquisition.

The law simply and succinctly states that the government acquisition must cause the departure. In this case the cause of departure, supported

by probative evidence, is the Notice to Vacate served on the tenants by 24TH STREET PARTNERS.

To the best of this writer's ability to determine, it appears that this case is one of first impression.

There is a case which deals with a situation where an owner of an apartment building was "influenced" by the expectation of a federal urban renewal project when the owner decided to sell property and removed tenants therefrom. However, the property was not acquired by the government; therefore, the value of the case is suspect for Petitioners' purposes.

> Dawson vs. U.S. Dept. HUD, D.C. Ga. 1976, 428 F.S. 328, aff'd. 592 F.2d. 1292.

The Highway Relocation Assistance Act (now repealed) provided relocation benefits when a person moved as a result of "reasonable expectation of acquisition of [his] property." Lathan V. Volpe, 455 F.2d. 1111 (1971). The URA does not deal with reasonable expectation. It commands existing cause, followed by effect.

If the tenants who moved before the GSA

signed the lease moved because they were ordered by 24TH STREET PARTNERS to vacate, why didn't those who moved after the signing move for the same reason?

The Board of Contract Appeals does not explain why the Notice to Vacate lost its inherent causative quality and why the acquisition replaced it as the cause. Looking backward the Board finds that, since the lease was signed, the ultimate acquisition was a virtual certainty; therefore, the government acquisition had to cause the departures; that is "bootstrap" argument and a non-sequitur. The Board ignores the uncontroverted evidence that 24th STREET PARTNERS did not know and could not know that the lease would be signed and that to the bitter end GSA retained the right to withdraw its SFO.

The Board of Contract Appeals is guilty of sophistry, and the Court of Appeals for the Federal Circuit failed to recognize that fact.

Respectfully submitted this 29th day of July, 1991.

Amil J. Ajamie

Amil J. Ajamie
Attorney for Petitioners

APPENDIX TO PETITION
FOR CERTIORARI

BOARD of CONTRACT APPEALS
General Services Administration
Washington, D.C. 20405

June 4, 1990

Appeal of 24TH STREET PARTNERS

GSBCA No. 8305

Granted in Part

Opinion by Administrative Judge Borwick

This appeal involves the question of a landlord's liability under its lease for relocation assistance payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-4655 (1982). Twenty-Fourth Street Partners, appellant, constructed and leased a building to respondent, the General Services Administration, for the use of the Forest Service. Before construction commenced, one of appellant's partners had operated two trailer parks with seventy trailers on the site. About two weeks before the award of the lease, that partner issued notices to quit to the residents of the trailer park.

Respondent has treated the residents as displaced persons entitled to benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and has paid them $81,098.41 in relocation benefits. Respondent has deducted that amount from Twenty-Fourth Street Partnership's rental payments on the ground that payment of those benefits is appellant's responsibility under the lease.

Appellant appeals, arguing that the notice to quit was issued solely to enable appellant to develop the property and had nothing to do with the lease award by respondent. Appellant also argues that the residents do not meet the definition of displaced persons under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 because of the timing of this notice to vacate.[1]

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[1]Appellant does not contest, nor could it be reasonably disputed, that a Government lease is an acquisition for the purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Appellant does not contest respondent's right under the lease

The parties submitted the appeal on the record without a hearing, pursuant to Rule 11. The record consists of the appeal file, supplemental appeal file, supplemental exhibits attached to record submission memoranda and the parties' record submissions and reply memoranda. Only entitlement is in issue. We grant the appeal in part. We reject appellant's argument that the notice to vacate was independent of the government lease. We agree with respondent that appellant is responsible under the lease for payments in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. We conclude that appellant is responsible for relocation payments to those residents of the trailer parks who actually moved from the trailer parks on or after August 30, 1983, the date when respondent awarded the lease. We remand the matter to the contracting officer for a determina-

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to take deductions in order to alleviate the alleged violations.

tion of quantum.

Findings of Fact

Davis Enterprises owned property at the corner of Twenty-fourth and McDowell Streets, Phoenix, Arizona, that had two trailer parks, named La Rosa and El Sereno, with approximately seventy mobile trailers on it. Appeal File, Exhibits 5, 15; Appellant's Supplemental Appeal File, Exhibits 12, 22. One of the partners of Davis Enterprises is Paul T. Davis. Appeal File, Exhibit 3.

On February 25 and 26, 1980, Davis Enterprises offered that property to three restaurant chains as attractive and potential sites for location. Each rejected Davis Enterprises' proposal. Appellant's Supplemental Appeal File, Exhibits 14-19.

On October 17, 1980, Davis Enterprises had received a circular from respondent expressing a need for space, to which Davis Enterprises responded offering several properties, including the property located on the corner of East

McDowell and Twenty-Fourth Streets. Appellant's Supplemental Appeal File, Exhibit 6. On or about November 12, 1980, respondent issued a solicitation for offers (SFO) for a lease of 20,400 square feet of space to house the Department of Agriculture's Forest Service, in Phoenix, Arizona. Offers were due on September 19, 1980. Occupancy was required by September 1, 1981. Appellant's Supplemental Appeal File, Exhibit 7.

On April 15, 1981, respondent's Space Management Division advised Davis Enterprises that the Government was re-evaluating its requirements as stated in the SFO and that no award would be made. Appellant's Supplemental Appeal File, Exhibit 20. On June 22, 1982, Davis Enterprises attempted, without success, to sell the property. Appellant's Supplemental Appeal File, Exhibit 22.

In August and September of 1982, Davis Enterprises, together with a real estate consultant, determined to develop cooperatively both sides

of McDowell Street, west of Twenty-Fourth Street, to take advantage of the location as a gateway to the airport. Davis Enterprises determined that construction of an office building would be the fastest way to produce a return on the partnership's investment. Appellant's Supplemental Appeal File, Exhibit 29.

On January 21, 1983, respondent again issued a solicitation for offers for a ten year lease of 21,340 to 23,580 square feet of space in Phoenix to house the offices of the Forest Service. Appeal File, Exhibit 3. Offers were due on February 24, to remain open until April 30, with occupancy required on October 1. Id. The solicitation provided in pertinent part:

> IF AN IMPROVED SITE IS OFFERED AND NEW CONSTRUCTION WILL RESULT IN THE DISPLACEMENT OF INDIVIDUALS OR BUSINESSES, THE SUCCESSFUL OFFEROR SHALL BE RESPONSIBLE FOR PAYMENT OF RELOCATION COSTS FOR DISPLACED PERSONS IN ACCORDANCE WITH THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

POLICIES ACT OF 1970 (PL 91-646), AND THE FEDERAL PROPERTY MANAGEMENT REGULATIONS SUBPARTS 101-6.1 AND 101-18.3, RESPECTIVELY. Id.

To respond to the solicitation, Davis Enterprises formed a partnership, called Twenty-Fourth Street Partners (appellant), with Logan E. Van Sittert, an architect, and his wife, Barbara C. Van Sittert. Appeal File, Exhibit 3; Appellant's Supplemental Appeal File, Exhibit 28. Appellant offered a new building to be constructed for the Government to lease on the site at the corner of Twenty-Fourth and McDowell Streets. Appeal File, Exhibit 3, Respondent's Exhibit 3. Appellant was the only offeror. Appeal File, Exhibit 15.

By letter of July 21, the Chief of respondent's Regional Leasing Branch forwarded copies of the lease contract to appellant, asked appellant to sign and return the contract, and advised:

Execution of the contract by the owners will

constitute your offer to lease space to the Government. This offer shall be interpreted as remaining open until either accepted by the Government or withdrawn by the owners. Execution of the contract by the Government shall constitute acceptance of the offer. Due to the size of the contract, the agreements must be approved by our Central Office in Washington D.C. prior to award. No contract is established until this approval has been received and the agreements are executed by the Government.

Respondent's Exhibit 2.

On August 15, Mr. Paul Davis sent a notice to quit to the residents of El Sereno and La Rosa which read in pertinent part:

This is to inform you the El Sereno and La Rosa Mobile Home Parks is sold. The new developers wish to build an office building on this land. In accordance with the Tenant Landlord ACT HB 2157 we are giving you a written 90 day notice herewith.

The new developer is quite anxious to start construction by October 1, 1983. To help him achieve his goal, the Davis Brothers will help relocate the tenants prior to October 1, 1983 by aiding in the following:

1. Davis Brothers will help pay for the moving of Mobile homes prior to October 1, 1983.

2. Will pay turn on fees for electric and telephone service.

Appellant's Supplemental Appeal File, Exhibit 22. This notice was received by the residents between August 15 and August 20. Appellant's Supplemental Appeal File, Exhibits 23-24. The record does not reflect any notice of proposed acquisition by respondent to the residents of the trailer park, and counsel for respondent concedes in its record submission memorandum that respondent did not provide such notice.

On August 30, respondent entered into a ten-year lease with appellant at $392,375 per year for 23,850 net usable square feet of office

space, 6,150 square feet of warehouse space, and 1,660 square feet of special purpose space, together with secured parking for sixty-one government vehicles. Appeal File, Exhibit 3.

On September 8, the Arizona Senior Citizens Law Project commenced efforts to secure relocation assistance for the displaced residents of the trailer park. Appeal File, Exhibit 4. On September 8, one of the partners, Mr. Van Sittert, stated that appellant "initiated a program in August to clear the property, in strict accordance with Arizona law, in order to commence construction of the USDA Project on October 3." He disclaimed responsibility for relocation assistance payments and requested a solution from respondent, as the problem was delaying the start of construction. Appeal File, Exhibit 5. During October and November, there ensued an attempt to settle the matter, with appellant and respondent sharing the cost of relocation. Respondent planned to increase the rental payments through supplemental lease

agreement. Appeal File, Exhibits 6-12. On December 7, respondent's auditors questioned respondent's responsibility for any payment to the appellant, which stalled settlement for further administrative review. Appeal File, Exhibits 12-13.

On December 20, the Arizona Senior Citizens Law Project expressed regret that the settlement had been delayed, stated its position that the Government was responsible for relocation assistance and threatened to sue the Government if relocation benefits were not forthcoming by January 31, 1984. Appeal File, Exhibit 14.

On February 3, 1984, the contracting officer, in a self-styled "final decision," advised appellant that under clause 156 of the lease, payment of relocation expenses was appellant's, and consequently, respondent would not reimburse relocation expenses. Appeal File, Exhibit 18. Respondent's Regional Chief of the Leasing Branch forwarded a copy of that letter to the Arizona Senior Citizens Law Project and orally

advised it that the Government disclaimed responsibility for relocation assistance. Appeal File, Exhibit 21.

On February 29, appellant's attorneys wrote respondent, disclaiming liability for relocation assistance payments on the grounds that it had planned to evict the residents and develop the property whether or not respondent awarded the lease to appellant:

> None of the tenants vacated by reason of a written order from the acquiring agency. None of them vacated as a result of acquisition of the property by GSA. All of them vacated because the property owner wanted them out and ordered them out. If GSA had backed out and not executed the lease, my clients would have insisted on the removal of the tenants and would have developed the property anyway. That was their plan. In fact, there is a second phase to the development of the property, having nothing to do with the Government lease.

Appeal File, Exhibit 22.

There is an issue as to whether appellant would have issued the notice to quit absent the expectation of an imminent Government lease. Davis Enterprises did not issue a notice to vacate during the many occasions between 1980 and 1982 that it tried to dispose of or develop its property. It issued the notice to vacate only when the procurement for the lease was coming to a close. One of appellant's principal partners admitted that appellant issued the notice to vacate in order to commence construction of the building to be leased to the Government. If a second phase to the development of the property exists, there is no proof, beyond self-serving conslusory statements in the record. We find as fact that appellant issued the notice to quit to the residents in order to enable it to commence construction of the building to be leased to respondent.

Appellant commenced informal relocation payments, not under the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, in mid-August of 1983, with most of the payments after September 1, 1983. Appellant's Supplemental Appeal File, Exhibit 35. Statements by seven residents indicate that they moved well after the respondent awarded the lease on August 30, 1983. Appellant's Supplemental Appeal File, Exhibit 32.

On or about March 9, 1984, respondent changed its position and agreed to pay directly to the residents of the trailer parks amounts due under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Appeal File, Exhibit 24. On April 18, appellant wrote respondent and complained that respondent had never answered appellant's letter of February 29. On May 29, respondent's Chief of the Leasing Branch reaffirmed the contracting officer's decision of February 3, that relocation benefits were the responsibility of the lessor. Between August of 1984 and September of 1985, respondent calculated and paid relocation benefits amount-

ing to $81,098.41 to the displaced residents. Appeal File, Exhibit 28, 29.

On October 11, 1985, the contracting officer issued her decision stating that respondent would deduct $1,351.64 for sixty months to recapture $81,098.41 that it had paid, which the contracting officer alleged was appellant's responsibility under clause 156 of the lease. Appeal File, Exhibit 31. A timely appeal followed.

Discussion

Appellant claims that it is not liable under the lease because (1) the notice to quit had nothing to do with the Government lease and (2) clause 156 of the lease requires it to bear relocation expenses only when those expenses are required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. It further argues that inasmuch as it gave notice to the residents of its trailer park fifteen days before respondent signed the lease, there was no Government "acquisition" which

triggered the duties under the Act. Respondent argues that benefits under the relocation act are available retroactively and that, under respondent's regulations implementing the Act, benefits are available to all residents.

The first of appellant's arguments--that its notice to the residents had no connection to the imminent award of the Government lease--is disingenuous at best. We have found as fact that the Government lease was the cause for the issuance of appellant's notice to the residents of the trailer parks. Our conclusion is made inescapable by the timing of notice, appellant's lack of similar notice to residents during prior (and unsuccessful) attempts to develop or sell the property and the admission of appellant's partner that the property was vacated to allow appellant to start construction on the building.

Appellant is correct that the contract clause requires appellant to pay residents' relocation expenses only when the Uniform Relocation Assistance and Real Property Acquisition Policies Act

of 1970 requires reimbursement of those expenses. Clause 156 of the lease requires a successful offeror to pay relocation benefits "in accordance with" the Act.

Appellant's second argument--that the residents were not displaced persons within the definition of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 because the notice to quit was furnished before the Government awarded the lease to appellant--requires further examination. Appellant argues that at the time of the notice to quit there was no Government acquisition or program, but merely an expectancy of one.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as it existed in 1983, defined "displaced persons" as:

> any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property in whole or in part, or as a result of the

> written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency or with Federal financial assistance.

42 U.S.C. § 4601(6) (1982). The Act further provided:

> Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person upon proper application as approved by such agency head for--
>
> (1) actual reasonable expenses in moving himself, his family . . . or other personal property[.]

42 U.S.C. § 4622 (1982).

Respondent's implementing regulations in force at the time of the acquisition set forth two conditions for eligibility as a displaced person: (1) the person must have moved as a

result of a written notice to vacate, by the acquiring agency, which may have been initiated after the commencement of negotiations, or (2) the real property must in fact have been acquired and the person must have moved as a result of its acquisition. 41 CFR 101-6.101-3(c)(2)(i), (ii) (1983).[2]

Courts faced with the issue of moving before acquisition have construed the definition provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to require either an actual acquisition before the displacement or advance written notice by the acquiring agency. Thus, the court in Messer v. Virgin Islands Urban Renewal Board, 623 F.2d 303, 306 (3rd. Cir. 1980), held:

The "acquisition" requirement was written

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[2]Respondent's current regulations dealing with relocation are found at 41 CAR Subpart 105-52.0 (1988). The definition of displaced person is found at 41 CAR 105-51.002(f) (1988). We are not called upon to construe these regulations in this appeal.

into the statute for the purpose of limiting benefits to situations in which the move is the result of an acquisition. The Supreme Court in Alexander v. Department of Housing and Urban Development, 441 U.S. 39, 59, 99 S.Ct. 1572, 1585, 60 L.Ed.2d 28, 1979, stated, "In sum, the legislative history of the written order clause reveals no congressional intent to extend relocation benefits beyond the acquisition context." Protection was provided for those who moved after receiving formal notice of an acquisition because of a proposed project, but not to those who moved without notice, based merely on speculation that acquisition might take place. Because the "acquisition" of 13 Queen Street had not occurred by the time [the lessor] moved, and no notice of intent to acquire the property had been issued, he is not eligible for relocation benefits.

Accord, Lowell v. H.U.D., 446 F. Supp. 859 (N.D. Cal. 1977).

However, the date of August 15--when the residents were ordered by appellant to vacate the trailer park--is not controlling, as appellant could have rescinded its notice to quit had it not received the award. Once, however, respondent awarded the lease, the expectancy of the development and the concomitant displacement became virtual certainties. Thus, those people who were residents of the trailer parks as of August 30, 1983--the date of the Government lease--were in fact displaced because of respondent's acquisition of the property by lease and thus qualify as displaced persons under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. 42 U.S.C. § 4601(6).

Thus, appellant, under clause 156 of its contract, is required to reimburse respondent for the moving expenses of those residents. Appellant is not required to reimburse respondent for the moving expenses of those residents who moved from the trailer parks before August

30, 1983, because there was neither a government acquisition nor a notice to vacate prior to that date. The record is unclear as to the identities and number of those residents who moved from the El Sereno and La Rosa trailer parks on or after August 30, 1983. These issues shall be addressed as part of the contracting officer's quantum determination.

Decision

The appeal is GRANTED IN PART as to entitlement and remanded to the contracting officer for a determination of quantum in accordance with this opinion.

S/Anthony S. Borwick
ANTHONY S. BORWICK
Administrative Judge

We concur:

S/Leonard J. Suchanek
Chief Administrative Judge

S/Vincent A. LaBella
VINCENT A. LaBELLA
Administrative Judge

UNITED STATES COURT of APPEALS
for the FEDERAL CIRCUIT

NOTICE OF ENTRY OF
JUDGMENT WITHOUT OPINION

JUDGMENT ENTERED: May 6, 1991

The judgment of the court in your case was entered today pursuant to Rule 36. No opinion accompanied the judgment. The mandate will be issued in due course.

Costs may be recoverable under Rule 39. A party entitled to costs is provided with a bill-of-costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs when taxed are payable to the party awarded its costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Payment should be made to counsel for the party awarded costs or, if the

party is not represented by counsel, to the party pro se. Costs should be paid promptly.

Exhibits and visual aids shall be promptly retrieved by the party that lodged them with this court.

FRANCIS X. GINDHART
Clerk

24TH STREET PARTNERS V US, 90-1492
(BCA GSA - 8305)

UNITED STATES COURT of APPEALS
for the FEDERAL CIRCUIT

90-1492

24TH STREET PARTNERS,

Appellant,

v.

THE UNITED STATES,

Appellee.

Judgment

ON APPEAL from the General Services Administration, Board of Contract Appeals, In CASE NO. GSBCA No. 8305, This CAUSE having been considered, it is ORDERED and ADJUDGED: Affirmed. See Fed. Cir. R. 36.

Per Curiam (NEWMAN, Circuit Judge, MILLER, Senior Circuit Judge, and PLAGER, Circuit Judge).

ENTERED BY ORDER OF THE COURT

S/Francis X. Gindhart
Francis X. Gindhart, Clerk

Dated: May 6, 1991

Mr. Paul Davis
24th Street Partners
719 W. McDowell Road
Phoenix, AZ. 85007

Re: Lease No. GS-09B-81797, 2324 E. McDowell Road, Phoenix, Arizona

Dear Mr. Davis:

This responds to your request for reimbursement for relocation expenses of tenants related to the above cited lease.

Our negotiations concerning these expenses were in good faith, however, after a review of the case by our General Counsel, Audit Staff and our Central Office, it has been determined that the Government is not responsible for reimbursement of these expenses. Therefore, it is the Government's position under the lease in paragraph 156, that tenant relocation expenses are the responsibility of the lessor. Accordingly, the Government cannot reimburse relocation expenses.

This is the final decision of the Contracting Officer. This decision may be appealed to the GSA Board of Contract Appeals. If you decide to

make such an appeal, you must mail or otherwise furnish written notice thereof to the GSA, Board of Contract Appeals, General Services Building, 18th & "F" Streets, N.W., Washington, D.C. 20405, within ninety days from the date you receive this decision. A copy thereof, also, is to be furnished to the Contracting Officer from whose decision the appeal is taken, at the above letterhead address. The notice shall indicate that an appeal is intended, should reference this decision and shall identify the contract number.

In lieu of appealing to the GSA Board of Contract Appeals, you may bring an action directly in the U.S. Court of Claims, within twelve months of the date you receive this decision.

Any such appeal would be subject to the rules of the GSA Board of Contract Appeals issued pursuant to Public Law 95-563, the "Contract Disputes Act of 1978". In the event that any dispute as a result of this decision involves an

amount of $50,000.00 or less, the accelerated procedures, as provided for in said rules shall be applicable, also at your sole election. On receipt of an appeal, the GSA Board of Contract Appeals furnishes each applicant with a copy of the applicable rules and procedures.

Sincerely,

DAVID M. ROTH
Chief, Leasing Branch
Real Estate Division
Public Buildings and Real Property

cc:
9 PEL Official/Reading/Unit File
9PE
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Mr. Amil J. Ajamie
Ajamie, Fay & Webb
Suite 1601 1st Interstate Tower
3550 North Central Ave.
Phoenix, AZ 85012

Re: Lease No. GS-09B-81797 - 2324 E. McDowell Rd., Phoenix, AZ

Dear Mr. Ajamie:

We have reviewed your letter of February 29, 1984. Since a final decision concerning this matter was issued on February 3, 1984, we are considering your letter as a request for reconsideration of that decision.

Our legal department has reviewed your submission and has found no additional evidence or information that warrants a change in the decision previously issued by the Contracting Officer. It is therefore determined that the prior decision stands, and that tenant relocation expenses are the responsibility of the lessor, in accordance with paragraph 156 of the lease.

Sincerely,

DAVID M. ROTH

Chief, Leasing Branch
Real Estate Division
Public Buildings & Real Property

cc:
Paul Davis
24th Street Parnters
719 W. McDowell Rd.
Phoenix, AZ 85007

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